

**MINUTES**

**MONTANA SENATE  
58th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON BUSINESS AND LABOR**

**Call to Order:** By **CHAIRMAN DALE MAHLUM**, on February 21, 2003 at 9 A.M., in Room 422 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Dale Mahlum, Chairman (R)  
Sen. Mike Sprague, Vice Chairman (R)  
Sen. Sherm Anderson (R)  
Sen. Vicki Cocchiarella (D)  
Sen. Kelly Gebhardt (R)  
Sen. Ken (Kim) Hansen (D)  
Sen. Sam Kitzenberg (R)  
Sen. Glenn Roush (D)  
Sen. Don Ryan (D)  
Sen. Carolyn Squires (D)

**Members Excused:** Sen. Bob Keenan (R)  
Sen. Fred Thomas (R)

**Members Absent:** None.

**Staff Present:** Sherrie Handel, Committee Secretary  
Eddie McClure, Legislative Branch

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: SJ 17, 2/10/2003; SB 402,  
2/13/2003; SB 390, 2/13/2003  
Executive Action: SJ 17; SB 282; SB 354

**{Tape: 1; Side: A}**

HEARING ON SJ 17

Sponsor: SENATOR JON TESTER, SD 45, BIG SANDY

Proponents: Roger McGlenn, Independent Insurance Agents Association of Montana; Al Smith, Montana Trial Lawyers Association; Bob Worthington, Montana Municipal Insurance Authority; Don Judge, Teamsters Local 190; Nancy Butler, Montana State Fund; Jerry Driscoll, AFL/CIO

Opponents: None

Informational Witnesses:  
Jerry Keck, Department of Labor and Industry

Opening Statement by Sponsor:

SENATOR JON TESTER, SD 45, BIG SANDY, referred to convoluted nature of the workman comp laws in the state that currently exist. What this bill would do is direct legislative counsel to designate the appropriate committee to study the workman compensation laws. On the second page of the bill, it talks about reporting back the conclusion of that study at the next legislative session so those legislators could make some adjustments, if necessary, in statute or the adjustments can be made in rule.

Proponents' Testimony:

Roger McGlenn, Independent Agents Association of Montana, provided written testimony, **EXHIBIT (bus39a01)**, and spoke on behalf of Jacqueline Lenmark, American Insurance Association.

Al Smith, Montana Trial Lawyers Association, stated that Mr. McGlenn shared that insurance agents find the law a little confusing and hard to understand. Attorneys do, too. He gets calls from his members who don't practice work comp all the time who have many questions. He explained that many of his members do pro bono work to help claimants who don't understand how to get through the system. He offered his full support of the resolution.

Bob Worthington, Montana Municipal Insurance Authority, supported the bill.

Don Judge, Teamsters Local 190, told the committee on behalf of employees that the workers comp laws are very confusing.

**Nancy Butler, Montana State Fund**, stated workers compensation law is a huge part of her life, and she carries her phone book wherever she goes , but she also has rules to examine and has to look at case files. Even though she has done it for years, it is still confusing sometimes. While it can't be made totally simple, anything that can be done to make it easier would be appreciated.

**Jerry Driscoll, Montana AFL/CIO**, said that in addition to the study of the simplification, the committee should study the difference between occupational disease and injury. There are three court cases winding their way through the Supreme Court that he believed would put them almost identical, so they need to probably put them together some time.

**Opponents' Testimony:**      None

**Informational Witness Testimony:**

**Jerry Keck, Department of Labor and Industry**, stated he provided the regulation for workers comp system, the attorneys, insurers, adjusters. The employees don't understand this law and sometimes his department doesn't either. He agreed it is complex. He urged passage of the resolution so the system could be simplified.

**Questions from Committee Members and Responses:**

None

**Closing by Sponsor:**

**SEN. TESTER** thought this would be an important study and hoped the legislative council could come up with the money to fund it.

#### **EXECUTIVE ACTION ON SJ 17**

**Motion/Vote:**    **SEN. SPRAGUE** moved that SJ 17 DO PASS. Motion carried 10-0.

**HEARING ON SB 402**

**Sponsor:** SENATOR VICKI COCCHIARELLA, SD 32, MISSOULA

**Proponents:** Kristi Blazer, Montana Association of Mortgage Brokers; Cyndi Rigler, Montana Association of Mortgage Brokers; Kathy Maiar, Mortgage Broker; Pam Adam, Mortgage Broker; William F. Gowan, Montana Land Title Association; Brian Gorman, Alpha Mortgage; Julie Dolan, Montana Association of Realtors; Steve Styles, Mortgage Broker

**Opponents:** None

**Informational Witnesses:**  
Annie Goodwin, Commissioner of Banking and Financial Institutions

**Opening Statement by Sponsor:**

**SENATOR VICKI COCCHIARELLA, SD 32, MISSOULA,** stated this bill comes to the Senate after five years of work. They started the process in 1998. A popular bill was brought forward in 1999, but didn't pass. The intent of the bill is to protect consumers and bankers by having some oversight over some middle men and the middle women who are the loan arrangers in the process of buying a home. This matter of having no regulation and oversight puts the consumers in jeopardy in probably one of the largest purchases they will ever make in their life. They put their faith and trust in the person interviewing them and trust that person is honest and charging them fees that are fair and accurate.

**Proponents' Testimony:**

**Kristi Blazer, Montana Association of Mortgage Brokers,** said she was hired to help them with the licensing bill in April. Because she didn't really know what a mortgage broker did, she went through the process of educating herself about what they do. She was impressed with the knowledge that they have and their creativity in trying to help some folks that don't have a good credit rating so they can get the loan to purchase a home. She has witnessed their professionalism and integrity and stated this bill means a lot to them. There are only about five states in the nation that do not license mortgage brokers. She went on to discuss various elements of the bill and why brokers need to be licensed and distributed an information sheet on the bill,  
**EXHIBIT (bus39a02) .**

**Cindy Rigler, Montana Association of Mortgage Brokers,** distributed a diagram/puzzle that shows how SB 402 completes the picture, **EXHIBIT (bus39a03)**. She gave several examples of unscrupulous brokers taking advantage of Montana consumers. She said they are proud of their industry. They take it very seriously and asked the committee to do the same.

**{Tape: 1; Side: B}**

**Kathy Maiar, Mortgage Broker from Billings,** commented on the fact that, while banks are heavily regulated, mortgage brokers are not. She said they don't want more legislation, but consumers need to be protected. She said she is Education Chairperson of the Montana Association of Mortgage Brokers. She discussed their annual convention and continuing education. She said education is powerful and through that education, consumers can be helped by informed mortgage brokers. She went on to say mortgage brokers are no different than banks, who sell paper, except her group doesn't have any regulations.

**Pam Adams, Broker-Owner from Billings,** stated she calls herself the Lone Ranger and that she was asked to explain the difference between brokers and bankers. When a person steps into a bank, it has made a commitment to fill a pool of loans, certain types, with certain credit grades at a fixed interest rate. That is their primary goal. As a mortgage broker, she works with investors all over the country. All of those investors have their own programs, and it is her job to find the best program, the best fees, and the best rates to fit a borrower's needs. **Ms. Adams** pointed out that she was an escrow agent for 15 years. She sat across the table from individuals being contacted by out-of-state and out-of-town companies who wanted her to do courtesy closings for them. She sat across the table from people she had never seen before and they are being charged astronomical fees. Their interest rates are through the roof. They are looking to her for advice. She would tell the consumers that they had a three day right of rescission and would give them the names of other lenders. In almost 99 percent of the cases, those people would end up with another lender. She present three samples of Good Faith Estimates from some of these lenders, **EXHIBIT (bus39a04), EXHIBIT (bus39a05) and EXHIBIT (bus39a06)**. **Ms. Adams** also gave the committee a copy of an article from the *Billings Gazette* about a woman who worked for a mortgage company and abused that position by stealing the identity of a customer, **EXHIBIT (bus39a07)**. She offered her support of the bill.

**William F. Gowen, Helena Abstract and Title Company,** rose in support of the bill.

**Brian Gorman, Alpha Mortgage in Bozeman**, discussed the last time this type of legislation came up and the fact that he opposed it then for a series of reasons. This time, however, he is a strong proponent, because of consumer abuses that can and do go on. **Mr. Gorman** also discussed the loss of revenue for the state when out-of-state lenders and investors do business with Montana consumers. **Mr. Gorman** offered a written outline of his written testimony, **EXHIBIT (bus39a08)**.

**Julie Dolan, Helena realtor and President of the Montana Association of Realtors**, asked to go on record in support of SB 402. She stated that, in addition to the laws and regulations that govern her members, they also offer another strict code of ethics and standards of practice. They have a responsibility to protect the small interest from our clients, and it is important to them to know that those who help their clients finance their homes share a common commitment to protect the Montana consumer. Right now they don't have anybody to complain to should there be a misuse by a mortgage broker. She briefly explained a story that happened six months ago in her office. A young couple came into her office. They had been shopping for a home for several months and had been working with an agent. The money for first time home buyers is really tight. The young couple had two young children and had shopped in several banks and mortgage companies to see what was going to be the best fit for them to accommodate the small amount of money they had. A family member had referred them to a mortgage company out of Belgrade. That mortgage company had promised them they could get a 100 percent lower value mortgage so they could use their down payment money to pay off any smaller bills that they had and make them look more credible. They thought this was the best deal possible, signed a buy-sell contract and proceeded to go through the inspection period for the purchase of the home. The first letter they received from the individual mortgage broker told them they had applied through that company for residential financing. At that time, **Ms. Dolan** obtained preliminary approval of their application subject to final underwriting. Concerned about the 100 percent financing, the agent in **Ms. Dolan's** real estate office called the broker to make sure it was okay and was told it was. He asked for another letter, which was just a mortgage commitment letter that stated the amount, the interest rate and that the only condition was a satisfactory title commitment and appraisal. Based on that information, they proceeded with the inspection and closing. It was to close on July 1st, so her agent contacted the office again on June 27. This letter was a "To Whom It May Concern" letter that said the financing was in the final stages but would not be complete by the previously scheduled closing date of July 1. They offered a revised closing date of July 2. The next day, her office got another letter, no

phone call, just a faxed letter. It said that as of that date, no issues had arisen which would prevent the borrowers from successfully qualifying for the property in question. The current delay was solely to allow the lender's underwriting department sufficient time to review the completed file. On July 2nd, the sellers moved out of their house. The buyers were preparing to move into the home, because the rented apartment in which they lived had already been re-rented. The mortgage broker called the young couple who were purchasing the home. They didn't call the agent. There were now some additional requirements for the loan. That's when the agent went to **Ms. Dolan** as broker-owner of the office. She called the mortgage broker out of Belgrade. After several attempts, he finally called her back and referred her to a new mortgage broker in Great Falls. She called the new mortgage broker in Great Falls, who was nasty and difficult to deal with. He said the deal would get done, but he didn't know how long it would take. **Ms. Dolan** called him back the next day and produced copies of all of the letters she had saying this was a done deal. She told this new mortgage broker they needed to go forward due to the buyers having to move out of their apartment. He told **Ms. Dolan** to schedule the closing for Friday, July 5th, but he wouldn't be able to fund the loan for 24 hours. **Ms. Dolan** and the buyers said they were fine with that. Friday, July 5th came and went. Everybody signed; the buyers moved into the house; the sellers moved into their new home. Fortunately, it was a new construction home, so the builder allowed them to move in even though he didn't have his money yet. Come Monday, they waited for the funds, but they never showed up. Come Tuesday, they received a fax from the lender with a page of conditions from the mortgage broker to be completed prior to funding the loan. There were six conditions. They were all just astounded that the completed file was no longer complete, so they scrambled and got all six conditions met and sent it back. On Wednesday morning, they received another fax thanking them for meeting the six conditions; however, they had one more condition. The buyers must come up with 3 percent down on a \$110K loan, so they needed another \$3,300. However, the young couple had spent that money paying down some of their bills as advised by the mortgage broker in order to get the 100 percent loan. They had spent about \$4,500 on closing costs and did not have anymore money. **Ms. Dolan** had to advise the young couple they would have to seek legal counsel because there was no place to go to complain or seek recourse. After a call and a letter from the lawyer, the mortgage broker refused to take **Ms. Dolan's** calls. On July 15th, he asked for one more thing, a copy of the earnest money check. They gave it to him. It wasn't enough. He needed a copy of the receipt that proved that it went into the bank and a copy of the bank statement showing that it actually cleared the bank. **Ms.**

**Dolan** commented she has been in this business for 16 years and nobody ever asked to do this before. They contacted the other broker, who was the listing agent. He held the earnest money and said he would not give anyone his bank statement, so they had to contact the lawyer again. The lawyer wrote a nasty letter. **Ms. Dolan** still doesn't know how they did, but the loan was finally funded. The young couple was promised a seven percent loan, but ended up paying 8.5 percent. **Ms. Dolan** closed by saying there are other cases out there like this one and she asked the committee for their support of SB 402.

**Steve Stiles, broker with Big Sky Mortgage in Bozeman**, asked for some modifications to the bill. One is the related experience required of three years as a broker. Related experience could be at the discretion of the department. As the committee had heard, this is a very specialized, professional field. He also discussed the grandfathering clause. He personally felt it would be irresponsible for the legislature to allow it in the bill, because some of the individuals who are already in the field might not be experienced enough and might need further education. He felt they should have to go through the qualification process. If they could meet that requirement, then they could be grandfathered in.

**{Tape: 2; Side: A}**

**Opponents' Testimony:** None

**Informational Witness Testimony:**

**Annie Goodwin, Commissioner of Banking and Financial Institutions for the Montana State Department of Administration**, provided proposed amendments to the bill and explained them, **EXHIBIT (bus39a09)**.

**Questions from Committee Members and Responses:**

**SEN. KELLY GEBHARDT** referred to Section 19 under rule making authority and he wanted some kind of fees she anticipated for testing, continuing education and licensing. **Ms. Goodwin** replied that, in terms of license renewals, administrative rule making process will entail a public hearing to give the licensee an opportunity for input.

**SEN. GEBHARDT** asked **Ms. Maiar** how much more it would cost her to go through to provide the service. She explained how much it would cost and that it would be patterned after the real estate industry's licensing rules and continuing education guidelines.



**SEN. MIKE SPRAGUE** commented that the amendments are good, but he wanted to be careful since this whole bill is a new section. He noted new Section 10 almost down to the bottom that says the department may deny an application if the applicant's criminal history demonstrates any felony criminal conviction or other convictions involving fraud or the dishonesty. He asked **Commissioner Goodwin** how dishonesty could be proven. She understood his concern and explained felony convictions and civil judgments. We are one of five states that do not have a mortgage brokers protection plan in place.

*{Tape: 2; Side: B}*

**CHAIRMAN DALE MAHLUM** said to **Commissioner Goodwin** that she already has jurisdiction over savings and loans and banks, and this will bring this type of industry into compliance under her department, which she said it would. He then stated there are a lot of small businesses and he is bothered by the people that advertise on TV like DiTech. He wanted to know if this would have something to do with those people. **Commissioner Goodwin** said it would and that it's a bit overwhelming to see what our divisions essentially could be involved in. Out of state companies that are reaching into the State of Montana without a license obviously are going to require some legal enforcement.

**Closing by Sponsor:**

**SEN COCCHIARELLA** stated the brick and mortar provision of this legislation says that they have to have an office in the state and that addresses the income tax issue. They will then have to pay income tax on the income they earned in Montana, which is what levels the playing field. Why should these small businesses, as you say, be the only ones that can turn on TV and somebody from out of state is potentially abusing our citizens and not paying for the business that they do here. So those are real additional benefits that she saw that could add to enhancement in business economic development and income tax collections that we so desperately need right now. She distributed two handouts regarding the bill, **EXHIBIT (bus39a10)** and **EXHIBIT (bus39a11)**.

**HEARING ON SB 390**

**Sponsor:**               **SENATOR JEFF MANGAN, SD 23, GREAT FALLS**

**Proponents:**       **Aidan Myhre, Montana Chamber of Commerce**

**Opponents:**        **Mark Simonich, Department of Commerce; Gary Amestoy, Richland Economic Development**

**Opening Statement by Sponsor:**

**SENATOR JEFF MANGAN, SD 23, GREAT FALLS**, opened by saying that SB 390 reorganizes the Office of Economic Development. This is not a bill that eliminates the Office of Economic Development. **SEN. MANGAN** expressed his full support for the Office of Economic Development. This bill would create a board of seven people. The legislature would appoint four of them, and the Governor would appoint the other three. In his opinion, this bill would strengthen, lend support to, and could possibly save the Office of Economic Development. He felt this is an important bill to ensure that the state has such an office for the betterment of the economic development of Montana. This bill simply moves them there with the board. His idea was the board would be moved to the Chamber of Commerce where they have access to all economic development functions already created plus job training, venture capital, and workforce development. **SEN. MANGAN** emphasized that this is not an elimination of the office and it doesn't eliminate any FTE's. It doesn't eliminate any money. He thought it would be better for our system.

**Proponents' Testimony:**

**Aidan Myhre, Montana Chamber of Commerce**, believed wholeheartedly in economic development efforts; so, for the basic reasons that **SEN. MANGAN** discussed, she support the bill. She stated she appreciated the opportunity to go on record in support of an economic development effort, whether it be the Department of Commerce or Governor's Office. She closed by saying they would appreciate it staying in the Governor's Office.

**Opponents' Testimony:**

**Mark Simonich, Department of Commerce**, rose in opposition to the bill and said he was present at the meeting on behalf of **Governor Judy Martz**. Just two years ago, he said he stood before this same committee as the administration opposing SB 445, which creased the Office of Economic Development. At that time, this committee overwhelmingly supported the idea that they were proposing; and, in fact, that support helped make that office a reality. His stated goal is the same as it was then. The goal is to help elevate the state's efforts to improve the economy. Their efforts to improve the economy to grow our economy must be high priority. They must be high profile. They know it is a long-term proposition. Short-term gains will not spell success. He emphasized they have begun their course and now must stay the

course. **Mr. Simonich** expressed his appreciation for the efforts of **SEN. MANGAN**. While it is a policy call the legislature needs to make, the administration would simply ask that the legislature continue to give them some time to have this office to work the way it's intended. He asked that the committee not take the steps to move this office.

**Gary Amestoy, Richland Economic Development Corporation**, rose in mild opposition to the bill after hearing **Ms. Myhre's** testimony. He said he was coming from a different approach. The original goal was to maintain the Office of Economic Opportunity. It is a very important program for Montana. The position taken is they believe that they send a stronger and more positive message to businesses that want to locate in Montana if this office is affiliated with the highest-elected officer of the state. They also believe the Governor's Office provides the Office of Economic Opportunity the ability to act with more authority and quicker than if they had to work through an agency and a board. He asked that it be located in the Department of Commerce rather than eliminating it altogether. He thought it would be more efficient and could operate quicker and with more authority out of the Governor's Office.

#### Questions from Committee Members and Responses:

**SEN. MIKE SPRAGUE** addressed **Mr. Simonich** and said everybody here is trying to be relatively creative. He didn't think this bill would have appeared if that frustration level seemed satisfied (meaning all those who supported the reorganization last time).

**SEN. SPRAGUE** asked him his feeling about the aspect of having outside can-do people as opposed to all the reasons why not. **Mr. Simonich** thought having citizen input into any government activity to be incredibly important. Having the people who are the business leaders that hire, that do the employing, that are involved in all the various aspects of what really drives our economy and having their input can only help make government better. He confirmed that **SEN. SPRAGUE** was correct when he said there isn't a specific board involved with the Department of Commerce in this action. There are six boards attached to the Department of Commerce. Every one of them is very specific, very focused in terms of some specific statutory authority that they have. He referred to **Dave Gibson of the Governor's Office** who was present to speak on how they are operating. **SEN. SPRAGUE** discussed what is level of frustration but not a sense of urgency. He asked if this was just a sense the legislators are getting or is there a sense of urgency within the Department of Commerce or Economic Development. He guessed those who come from the outside get frustrated with the "grindingness" of it. **Mr. Simonich** assured **SEN. SPRAGUE** that there are a variety of people

in government that get just as frustrated with the slowness of the grinding of wheels that would like to see things move much more quickly. He wholeheartedly assured him there is an urgency. Their goal is not just more jobs, because the state doesn't need more \$6 per hour jobs. Their goal is to bring in the types of business that will pay much better salaries to the people of Montana.

**{Tape: 3; Side: A}**

**SEN. GLENN ROUSH** was told by **Mr. Simonich** that, with regard to rule making authority, many of the boards, particularly those regulatory boards, all had their own, specific, rule making authority. He went on to discuss the various boards and their allowed rule making authority.

**SEN. CAROLYN SQUIRES** wanted to know the composition of the board being discussed. **Mr. Simonich** told her the composition of the board, as stated in the sponsor's opening statements. That board would replace the Board of Research and Commercialization and has the sole responsibility for administering research and commercialization and grant and loan program so they could develop the rules. They take the applications. They make the grants for research. Those studies would be consumed by this board. The board would be revised. The membership would be restructured just slightly. In essence, it would be the same board as the mechanism for this new authority.

**SEN. SQUIRES** addressed **Dave Gibson of the Governor's Office** regarding workers rather than management persons on the board. **Mr. Gibson** discussed that the Board of Research and Commercialization would be replaced by this proposed board and that he is the worker bee along with those already on his board. **SEN. SQUIRES** said she was adamant that there has to be somebody to represent the worker bees.

**SEN. SPRAGUE** and **Mr. Gibson** discussed the frustration level both of them experience with the lack of money and waiting for the legislature.

**Closing by Sponsor:**

**SEN. MANGAN** closed by stating, "We are going to catch flack, but it is the right thing to do."

EXECUTIVE ACTION ON SB 282

Motion: SEN. SQUIRES moved that SB 282 DO PASS AS AMENDED,  
**EXHIBIT**(bus39a12) (SB028201.aem) .

Discussion: Eddy McClure, Legislative Staff, distributed the amendments and explained them followed by Nancy Butler, Montana State Fund, who distributed and discussed a letter which contained information from the state of Oregon relevant to this bill, **EXHIBIT**(bus39a13) .

Vote: Motion carried 8-0.

EXECUTIVE ACTION ON SB 354

Motion/Vote: SEN. GEBHARDT moved that SB 354 BE INDEFINITELY POSTPONED. Motion carried 8-0.

**ADJOURNMENT**

Adjournment: 11:07 A.M.

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SEN. DALE MAHLUM, Chairman

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SHERRIE HANDEL, Secretary

DM/SH

**EXHIBIT (bus39aad)**